

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket
No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF WEST ALLIS, WISCONSIN

These Comments are filed by The City of West Allis, Wisconsin, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, The City of West Allis believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

West Allis, Wisconsin, is a city with a population of 60,000. Our franchised cable provider is Time Warner Cable, and our community has negotiated cable franchises since 1980.

Our Current Franchise

Our current franchise began on January 1, 1996 and expired on December 31, 2005, while completing current renewal negotiations a three month extension has been provided through March 31, 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access. The government access channel is supported through the franchise fee, and the public and educational access channels are supported by a separate fee, mutually agreed to and originally negotiated by West Allis and Marcus Cable. In addition a capital grant provided at the beginning of the current franchise term for equipment acquisition was recouped in the first four years of the current Agreement due to an increase in cable customers.

Our franchise contains the following institutional network ("I-Net") requirements: the I-Net was upgraded with the cable system to a fiber/cable hybrid configuration. The cable operator is required to maintain the I-Net in accordance with NESC standards. The I-Net supports our PEG access channels and their transport to the cable headend for delivery to cable customers in West Allis.

Our franchise contains the following requirements regarding emergency alerts: that the operator maintain appropriate equipment at its Headend facility, which is designated to override the audio portion of each video cable channel and substitute an audio emergency message, which may be used by the Mayor of West Allis or his/her designee. The emergency override equipment shall be configured to accept remote activation by touch-tone telephone, and include a backup power facility.

Our franchise contains the following customer service obligations and provisions, which help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. We have provisions addressing the following areas: Maintaining a local office to deal with customers regarding bill payments and adjustments; service calls for installation, reconnection or disconnection; and, distribution and reception of converter boxes and remotes. Procedures developed to handle customer complaints, service requests, refunds, complaint and outage records, and, customer privacy.

Our original and current franchise contains a reasonable build and upgrade schedule for the cable operator stating completion shall occur within a twenty-four (24) month period from the execution date of the Franchise Agreement.

Our franchise extends to the cable operator the privilege of operating the cable system within the corporate limits of West Allis as now or in the future may exist as shown on the map found in Appendix A of the franchise agreement.

In order to ensure that our residents have access to current telecommunications technologies, our current franchise contains the following rebuild or upgrade requirements: ...Shall contain a fiber optic trunk and coaxial feeder lines and an initial bandwidth of 800 MegaHertz. The system shall be configured to enable Upstream and Downstream transmission of video, data and audio signals. Equipment shall be capable of two-way and interactive services throughout the Franchise Area. Cable system testing shall comply with the regulations specified in Title 47, Section 76, Subpart K of the Code of Federal Regulations. The Franchise Agreement does not restrain or prohibit the Operator from adding new services or technologies, but states the Franchise Authority be notified forty-five (45) days in advance of providing such services or new technologies.

Our franchise contains the following insurance and bonding requirements: The operator shall secure and provide to the City a Letter of Credit in the amount of fifteen thousand dollars (\$15,000) as a security for the faithful performance of all the terms and conditions of the Franchise Agreement. The Operator also will maintain a performance bond with at least two sureties in the penal sum of two hundred and fifty thousand dollars (\$250,000) throughout the term of the Franchise. The Operator will maintain insurance in the minimum amounts for two million dollars (\$2,000,000) for bodily injury or death to any one (1) person; two million dollars (\$2,000,00) for bodily injury or death resulting from any one (1) occurrence and ten million dollars (\$10,000,000) for umbrella liability coverage. All premiums on policies required by the Franchise Agreement shall be at the expense of the Operator

The cable ordinance upon acceptance of the franchise agreement grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances otherwise complied with. Through acceptance of the Franchise Agreement the Operator agrees to comply with all other applicable ordinances, regulations, and codes regarding Public Rights of Way belonging to the City.

The Franchise Agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

Liquidated Damages:

For failure to substantially complete upgrade of system in accordance with franchise provisions - \$500 per day.

For failure to obtain permits for working in Public Rights of Way - \$100 per day.

For failure to comply with construction, operation, or maintenance standards - \$100 per day.

For failure to test performance of the cable system following a request by the Franchise Authority - \$100 per day.

For failure to provide data, documents, reports, or information to the Franchise Authority during a performance review - \$50 per day.

For failure to submit timely reports required under the Agreement - \$50 per day.

Franchise Fee Audits:

The Franchise Authority shall have the right to inspect the Operator's income records, worksheets, notes, journals, ledgers, and other appropriate financial records.

A franchise audit shall be completed by an independent and certified auditing firm every three years during the life of the Franchise.

Cost of said audit shall be borne by the Operator if it is determined the Operator's annual payment to the City for the preceding year increased by more than 5%, otherwise the cost shall be borne by the Franchise Authority.

Failure to Perform:

Failure to perform within the provisions of the section of the Agreement pertaining to Construction Standards shall be considered as material violations of the Franchise Agreement. If the Operator fails to cure after reasonable notice and opportunity the Franchise Authority may consider the Operator to be in "default" of the Franchise Agreement and initiate revocation proceedings.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to evaluate the legal, technical and financial qualifications of an Operator, and also determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is

approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

The City and Cable Operator can meet and discuss “potential changes to the Franchise which are necessitated due to technological or marketing changes in the field of cable telecommunications and the changing needs and interest of the community... Based on the outcomes of said meeting(s) and discussion(s), the parties may request to amend the Franchise Agreement to incorporate proposed changes which have been agreed upon by the Franchising Authority and the Grantee”. Regarding modification or changes to the Communications or Cable Acts our franchise states, “ In the event the Communications or Cable Acts are modified or amended in any manner that is mandatory, or the FCC modifies or alters any of its regulations pertaining to cable television or Cable-Based Communications which may affect any provision(s) of the Franchise Agreement, such provisions shall remain in effect until the effective date of such modifications, amendments, or alterations... upon notice that said modifications, amendments, or alterations may affect any provision(s) of this Agreement and prior to the effective date of said modifications, amendments, or alterations, or as soon thereafter as practical, shall meet in good faith to amend this Franchise Agreement accordingly.”

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: The West Allis Cable Ordinance No. 6189 states, “Items required for action by the Common Council shall be taken only after public notice of said proposed action, inquiry, or proceeding is published in the official newspaper, and a copy of said notice is served upon the Grantee. The Grantee shall have an opportunity to respond at the hearing and/or in writing. Members of the public shall have an opportunity to respond or comment in writing on the proposed action and appear at said proceeding or hearing... The city shall not take any final action with regard to the evaluation, modification, renewal, revocation, or termination of the Grantee’s Franchise unless the City has – provided notice and opportunity to cure; called a meeting for the purpose of taking such action as specified; complied with the Public Notice provisions of the Wisconsin Open Meetings Law; advised the Grantee in writing by either certified United States Mail or delivery by hand, at least fourteen (14) days prior to such meeting as to its time, place, and purpose; published a notice at least once, ten (10) days before the meeting; the Grantee and any interested person are given an opportunity to be heard...”

Competitive Cable Systems

Our community was approached twice by Ameritech New Media with regards to offering a competitive cable service. The first time was in 1995 and then again in 1998. At the second meeting Ameritech New Media said they were concentrating on areas in Illinois, Ohio and Michigan, and that is why there was such a long gap between their initial visit and the second. The discussions never went any farther, because Ameritech was purchased by SBC (now at&t), and SBC sold off the cable franchises Ameritech New Media had at the time. Digital Access also approached the City with regards to offering not only cable service, but also voice and data. Digital Access was actually constructing a Headend facility and acquiring franchises in our county when their lending sources dried up and they went out of business. It is important to emphasize that the City of West Allis has never turned away any Company interested in offering competitive cable services to our community.

Conclusions

The local cable franchising process functions well in the City of West Allis. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington or for that matter a State one to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.)

will be available to meet local needs. These factors are equally present for new entrants as for existing system.

The City of West Allis therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

West Allis, Wisconsin

By: Mayor Jeannette Bell
City Hall
7525 West Greenfield Avenue
West Allis, Wisconsin 53214

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov
Paul Ziehler, pziehler@ci.west-allis.wi.us